

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,657,739
Registered December 19, 2002
Trademark ELLE BELLE

T T A B

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Hachette Filipacchi Presse,	:	
	:	
Petitioner,	:	Cancellation No. 92042991
	:	
-v-	:	
	:	
Elle Belle, LLC	:	
	:	
Respondent.	:	
-----	x	

**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO PETITIONER'S
SUMMARY JUDGEMENT MOTION**

Petitioner Hachette Filipacchi Presse ("Hachette" or "Petitioner"), through its undersigned attorneys, submits this reply brief in further support of its motion for summary judgment and respectfully requests that the Trademark Trial and Appeal Board (the "Board") grant its motion for summary judgment.

PRELIMINARY STATEMENT

Respondent has conceded that it has never used its ELLE BELLE Mark in connection with the following items of men's, children's or women's clothing identified in its use-based application and Registration: "trousers, vests, pajamas, T-shirts, socks and stockings, singlets, neckties, underpants, hats, raincoats, overcoats, greatcoats,



bathing suits, sports overalls, wind-resistant jackets and ski pants” and that Respondent’s President, Paramjit Singh (“Singh”) knew that Respondent had never used its ELLE BELLE Mark in connection with these goods when he signed his declaration of use to the contrary in support of Respondent’s application to register the Mark. The only issue disputed by Respondent is Singh’s understanding of the declaration he signed. As explained below, this is not enough to rebut Petitioner’s clear and convincing evidence that Respondent fraudulently procured its trademark registration.

ARGUMENT

I. IT IS UNDISPUTED THAT SINGH KNEW THAT THE MARK WAS NOT IN USE ON ALL GOODS LISTED IN THE APPLICATION WHEN HE SIGNED HIS DECLARATION.

Respondent has conceded throughout this proceeding not only that it has never used its ELLE BELLE Mark on more than two-thirds of the goods identified in Respondent’s application, but also that Singh knew at the time he signed his declaration that the Mark was not being used in connection with these goods. *See* Petitioner’s Motion for Summary Judgment and Memorandum of Law in Support Thereof at 3, 5-6 and Exhibits B, C annexed thereto; *compare* Respondent’s Response to Petitioner’s Summary Judgment Motion at 3-4; Affidavit of Paramjit Singh in Support of Respondent’s Response to Petitioner’s Summary Judgment Motion at ¶ 3.

Singh now contends that he did not understand what he signed, and therefore he did not have the requisite intent to commit fraud on the United States Patent & Trademark Office (“USPTO”). Regardless of the truth of his statement, the issue of

fraud is not determined by Singh's specific or actual intent. *Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 U.S.P.Q.2d 1917, 1928 (T.T.A.B. 2006); *Medinol Ltd. v. Neuro Vasx Inc.*, 67 U.S.P.Q.2d 1205, 1209 (T.T.A.B. 2003) ("The appropriate inquiry is therefore not into the registrant's subjective intent, but rather into the objective manifestations of that intent."). Rather, fraudulent intent is satisfied upon a showing that the applicant knew or *should have known* that the application contains false statements of fact. *Torres v. Cantine Torresella S.r.l.*, 1 U.S.P.Q.2d 1483, 1484-85 (Fed. Cir. 1986) (emphasis added). Singh's argument that he did not have actual or specific knowledge that his declaration was false is unpersuasive as a matter of fact and law, as explained in Parts A through C below.

A. Singh's Fraud Cannot Be Excused As An Inadvertent Error Or Oversight.

Where, as is the case here, an applicant knew that a representation of fact in its trademark application was false, claiming that the false statement was a mere mistake or misunderstanding will not shield the applicant from a finding of fraud. *Torres*, 11 U.S.P.Q.2d at 1484-85 (rejecting applicant's contention that error in the application "was due to a misunderstanding on his part and not because of his fraudulent intent" where applicant knew or should have known that the submitted label was no longer in use and the mark was not in use on all of the goods listed in the application). As discussed above, it is *undisputed* that Singh knew that the ELLE BELLE Mark was not in use on all the goods listed in the application when he signed his declaration. Accordingly, Respondent cannot now thwart a finding of fraud by claiming that Singh's misrepresentation before the USPTO was due to his lack of understanding of the

application process -- especially when he was represented by legal counsel -- and an apparent miscommunication with his attorney.

B. Singh's Declaration Was Straightforward And Easy To Understand.

Singh swore under penalty of perjury in his declaration in support of Respondent's application to register the ELLE BELLE Mark that the Mark "is now in use in such commerce" in connection with all of goods identified in the application. (Exh. A attached hereto, ("Exh. A, Singh Decl.") annexing Singh's Declaration). The Board has stated that the phrase "'is now in use in commerce' is clear, and its meaning is unambiguous." *Standard Knitting*, 77 U.S.P.Q.2d at 1927.

Moreover, Respondent's claim that Singh did not understand the simple and straightforward language contained in the declaration is unreasonable. *See Medinol*, 67 U.S.P.Q.2d at 1210 ("Neither the identification of goods nor the statement of use itself were lengthy, highly technical, or otherwise confusing, and the President/CEO who signed the documents was clearly in a position to know (or to inquire) as to the truth of the statements therein.").¹ Singh is a United States citizen and has been residing in the United States since 1984. (Deposition of Paramjit Singh ("Exh. B, Singh Dep."), dated August 15, 2003, pertinent pages and exhibits to which are annexed hereto as Exh. B, at 15:4-7). He studied English while living in Afghanistan and took English classes when he moved to the United States. (*Id.* 16:4-14, 18-22). Singh has been in the retail fashion

¹ Singh apparently had no difficulty comprehending the language in the affidavit he submitted in support of Respondent's Response, which provides a detailed and articulate account of the procurement of the ELLE BELLE Mark -- including reference to goods that were "in use" and those that Respondent "would [] use."

industry since coming to the United States and starting Elle Belle, L.L.C. ten years ago. (*Id.* at 13:2-3, 17:5-33:10). Finally, Singh is the most knowledgeable person with respect to the goods sold in connection with the ELLE BELLE Mark. (*Id.* at 9:8-10:11). Singh testified clearly that he knew that the goods at issue were not in use at the time he signed his declaration and neither he nor his attorney attempted to explain anytime after he signed the declaration or anytime during his five-hour deposition in this matter, that he did not understand what “in use” meant.² Rather, Singh waited until receiving Petitioner’s brief in support of its motion for summary judgment to aver for the first time that he did not understand the meaning of the declaration that he signed under penalty of perjury over six years ago.

C. If Singh Did Not Understand His Declaration, He Should Have Clarified The Language With His Attorney.

It is an applicant’s obligation to confirm the truth and accuracy of statements contained in a trademark application prior to submission to the USPTO. *Standard Knitting*, 77 U.S.P.Q.2d at 1227-28. This obligation should be apparent to any applicant signing a supporting declaration stating “willful false statements and the like are punishable by fine or imprisonment, or both, . . . [and] may jeopardize the validity of

² At the outset of his deposition, Singh was instructed that he should ask for a question to be repeated or rephrased if he did not understand. (Exh. B, Singh Dep., at 5:15-25). He did not ask Petitioner’s counsel to repeat or rephrase questions relating to his knowledge at the time of his declaration, although he did ask for clarification or repetition at other times during the deposition. (*Id.* at 132:5-9, 223:9-10). Singh was also told that he could supplement answers, which he did at other times during the deposition. (*Id.* at 6:22-7:4, 84:9-88:12). Finally, when asked “is there is any reason that you know of that would affect your ability today to testify truthfully and accurately,” Singh answered “no.” (*Id.* 8:5-8). Neither Singh nor his attorney raised a potential language barrier. Moreover, Singh’s attorney did not object to or attempt to clarify Petitioner’s attorney’s questions or Singh’s responses relating to Singh’s knowledge.

the application or any registration resulting therefrom." (Exh. A, Singh Decl.). See *Medinol*, 67 U.S.P.Q.2d at 1209 ("Statements made with such degree of solemnity clearly are - - or should be - - investigated thoroughly prior to signature and submission to the USPTO."). Singh nowhere claims in his deposition, brief or Affidavit that he did not understand that he was signing his declaration under penalty of perjury.

A misunderstanding on the part of Singh's attorney when preparing the application and declaration will not preclude a finding of fraud. Singh, "having signed the affidavits, must alone be held accountable for the false and fraudulent representations made therein." *Ets. Lardenois v. Lazarus*, 168 U.S.P.Q. 604, 605 (T.T.A.B. 1970). See also *Smith Int'l, Inc. v. Olin Corp.*, 209 U.S.P.Q. 1033, 1047 (T.T.A.B. 1981) (upon signing affidavit, applicant becomes responsible for any mistakes made by attorney).³

II. RESPONDENT CANNOT CURE ITS FRAUD BY AMENDING ITS REGISTRATION.

Eliminating the goods on which a mark has never been used from the registration is not a cure for fraud. *Standard Knitting*, 77 U.S.P.Q. at 1928; *Medinol*, 67 U.S.P.Q.2d at 1208. Once fraudulent procurement of a trademark registration has been established, the registration must be canceled in its entirety. *Standard Knitting*, 77 U.S.P.Q. at 1928; *Medinol*, 67 U.S.P.Q.2d at 1208; J. Thomas McCarthy, *McCarthy on*

³ Even if Singh did in fact misunderstand the application or the content of his declaration, receipt of the certificate of registration presented Respondent with the opportunity to correct his mistake or consult counsel, which it failed to do. As the T.T.A.B. noted in *Medinol*: "Respondent's failure to point out its misstatement and seek correction thereof prior to the filing of the petition for cancellation clearly supports our finding that the misstatement was intentional." *Medinol*, 67 U.S.P.Q.2d at 1210 n.12.

Trademarks and Unfair Competition, § 31:73 (4th ed. 2006) (hereinafter "McCarthy").

Accordingly, Respondent's proposal to amend its registration to reflect only those goods for which the ELLE BELLE Mark is actually in use must be denied. Respondent's Mark must be canceled in its entirety as a result of Respondent's fraudulent procurement.

III. RESPONDENT'S MISREPRESENTATION WAS MATERIAL.

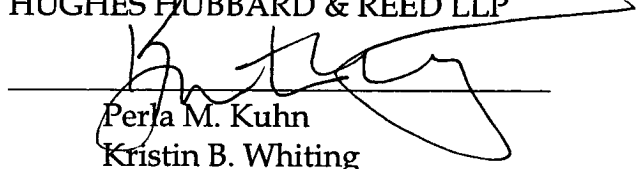
Respondent's contention that its misrepresentation was not material because it is likely that the USPTO would have registered the ELLE BELLE Mark if the application contained the limited list of women's clothing on which the mark was actually being used misconstrues the applicable standard of materiality. The fact that Respondent theoretically could have obtained a registration based on the limited list of women's clothing does not save Respondent's misrepresentation from qualifying as material. Respondent's misrepresentation was material because the USPTO would not have issued the registration *but for* Respondent's misrepresentation. *Standard Knitting*, 77 U.S.P.Q.2d at 1927 ("There is no question that the USPTO would not have granted registrations covering goods on which the mark is not being used."); *Medinol*, 67 U.S.P.Q.2d at 1208 (same); *Otis Elevator Co. v. Echlin Mfg. Co.*, 187 U.S.P.Q. 310, 315 (T.T.A.B. 1975) (registration a nullity where the mark was not being used for the goods disclosed in the application); McCarthy at §31:73.

CONCLUSION

Based on the foregoing, the Board should grant Hachette's motion for summary judgment and cancel the Respondent's registration for the ELLE BELLE Mark.

Dated: June 15, 2006

HUGHES HUBBARD & REED LLP



Perla M. Kuhn
Kristin B. Whiting
Lori Weiss

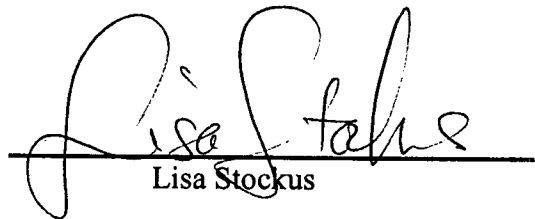
Attorneys for Petitioner
One Battery Park Plaza
New York, NY 10004-1482
(212) 837-6000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petitioner's Reply to Respondent's Response to Petitioner's Summary Judgment Motion is being served on June 15, 2006 by first class mail in a postage prepaid envelope, addressed as follows:

Hui Ri Kim, Esq.
Balram Kakkar, Esq.
Kakkar & Kadish
261 Madison Avenue, 25th Fl.
New York, NY 10016

Dated: June 15, 2006
New York, New York

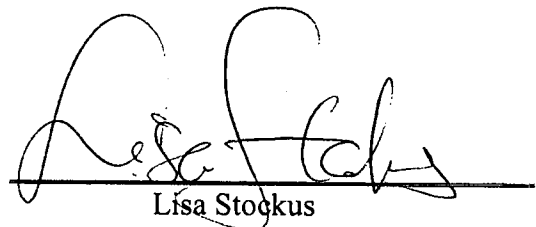


Lisa Stockus

CERTIFICATE OF MAILING

I hereby certify that this Petitioner's Reply to Respondent's Response to Petitioner's Summary Judgment Motion is being deposited on June 15, 2006 with the United States Postal Service as first class mail in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451.

Dated: June 15, 2006
New York, New York



Lisa Stockus



APPLICATION FOR TRADEMARK REGISTRATION

Mark: ELLE BELLE

Int'l Class No.: 25

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Elle Belle, LLC

A corporation in good standing in the state of New York

1020 6th Avenue

New York, N.Y. 10018

The above-identified applicant has adopted and is using the trademark shown in the accompanying drawing on clothing articles for men, women and children: namely, shirts, blouses, dresses, evening wear, skirts, trousers, vests, jerseys, pants, pajamas, t-shirts, socks and stockings, singlets, corsets, garters, underpants, petticoats, hats, head scarves, neckties, raincoats, overcoats, great coats, bathing suits, sports overalls, wind resistant jackets and ski pants, and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946.

The trademark was first used in connection with said goods on October 1995; was first used in interstate commerce on October, 1995; and is now in use in such commerce.

The trademark is used by imprinting it on the subject goods, and printing it on labels made of paper and other material and three (3) specimens showing the mark as actually used are presented herewith.

00099

Applicant hereby appoints BALRAM KAKKAR, of 144 E. 44th Street, Sixth Floor, New York, N.Y. 10017, a member of the bar of the States of New York and Connecticut and District of Columbia, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.

Elle Belle, LLC

By: _____

Paramjit Singh
Paramjit Singh
President

Elle Belle, LLC
1020 6th Avenue,
New York, N.Y. 10018

Date of first use: October 1995

Goods: Clothing articles for men, women and children: namely, shirts, blouses, dresses, evening wear, skirts, trousers, vests, jerseys, pants, pajamas, t-shirts, socks and stockings, singlets, corsets, garters, underpants, petticoats, hats, head scarves, neckties, raincoats, overcoats, great coats, bathing suits, sports overalls, wind resistant jackets and ski pants.

00097

Paramjit Singh declares that he is an officer of applicant corporation, namely, the President, and is authorized to execute this declaration on behalf of said corporation; he believes said corporation to be the owner of the mark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that all statements made on information and belief are believed to be true; and that he has been warned that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Elle Belle, LLC

By

Paramjit Singh

Paramjit Singh
President

Dated: March 6, 2000

00098

CERTIFICATION OF MAILING

I hereby certify that the enclosed correspondence concerning the application to register ELLE BELLE as a trademark is being deposited with the United States Postal Service, certified mail, return receipt requested, in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on March 10, 2000.

Dated: March 10 , 2000

By: Balram Kakkar

00095

Elle Belle, LLC
1020 6th Avenue
New York, N.Y. 10018

Date of first use: October 1995

Date of first use in commerce: October 1995

Goods: Clothing articles for men, women and children: namely, shirts, blouses, dresses, evening wear, skirts, trousers, vests, jerseys, pants, pajamas, t-shirts, socks and stockings, singlets, corsets, garters, underpants, petticoats, hats, head scarves, neckties, raincoats, overcoats, great coats, bathing suits, sports overalls, wind resistant jackets and ski pants

International Class: 25

ELLE BELLE

00096



1
2 UNITED STATES PATENT AND TRADEMARK OFFICE
3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
4 HACHETTE FILIPACCHI PRESSE,)
5)
6 Petitioner,)
7)
8 VS.)
9)
10 ELLE BELLE, LLC,)
11)
12 Respondent.)
13)
14)
15 -----)

10
11 DEPOSITION OF PARAMJIT SINGH
12 New York, New York
13 Monday, August 15, 2005
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18
19
20
21
22

23 Reported by:
24 Robert X. Shaw, CSR
25 CSR NO. 817
JOB NO. 176146

Page 2

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2
3
4 August 15, 2005
5 10:10 a.m.
6
7 Deposition of PARAMJIT SINGH,
8 held at the offices of Hughes Hubbard
9 & Reed, One Battery Park Plaza, New
10 York, New York, pursuant to Notice,
11 before Robert X. Shaw, CSR, a Notary
12 Public of the State of New York.
13
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Page 3

1
2 APPEARANCES:
3
4 HUGHES HUBBARD & REED LLP
5 Attorneys for Petitioner
6 One Battery Park Plaza
7 New York, New York 10004
8 BY: KRISTIN B. WHITING, ESQ.
9
10 KAKKAR & KADISH
11 Attorneys for Respondent
12 261 Madison Avenue
13 New York, New York 10016
14 BY: HUI RI KIM, ESQ.
15
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Page 4

1 P. Singh
2
3 PARAMJIT SINGH, having been
4 first duly sworn by the Notary Public,
5 testified as follows:
6 EXAMINATION BY
7 MS. WHITING:
8 Q. Good morning, Mr. Singh. Would you
9 please state your full name for the record.
10 A. Paramjit Singh.
11 Q. What is your address? Your home
12 address.
13 A. The home address is 30 Juniper Lane,
14 Muttontown, New York 11791.
15 Q. What's the address?
16 A. 30 Juniper Lane.
17 Q. What is your telephone number?
18 A. Home?
19 Q. Yes.
20 A. (516) 496-1012.
21 Q. Your business phone number?
22 A. (212) 391-4254.
23 Q. All right. My name is Kristin
24 Whiting. I am the attorney for the Petitioner
25 in this case, Hachette Filipacchi Presse, and

Page 5

1 P. Singh
2 I will be taking your deposition today.
3 A. Okay.
4 Q. Have you been deposed before?
5 A. No.
6 Q. So, let me just explain a few things
7 at the outset.
8 A deposition is a series of
9 questions from me, which you will answer under
10 oath.
11 A. Okay.
12 Q. The court reporter is here because
13 he takes down my questions and your answers.
14 A. Okay.
15 Q. If there is any time that you don't
16 understand my question, please ask me to
17 repeat it.
18 A. Okay.
19 Q. Or if you don't understand it, ask
20 me to rephrase it.
21 A. Yes.
22 Q. I will be happy to do that at any
23 time. I am sure that there will be times when
24 I might not phrase the question so artfully;
25 so, please do that.

2 (Pages 2 to 5)

Page 6

1 P. Singh

2 A. Thank you.

3 Q. The court reporter takes the

4 testimony; so, please be sure to respond

5 orally. When you nod your head, it won't

6 appear on the record as a Yes or a No. Make

7 sure to say Yes or No.

8 A. Okay.

9 Q. If your attorney objects to one of

10 my questions, you can still answer the

11 question, and I will ask you to please answer

12 the question, unless she instructs you not to

13 answer.

14 A. Okay.

15 Q. If at any point you want a break,

16 that is fine. Just let me know.

17 A. Okay.

18 Q. I will ask you, however, that if I

19 have a question pending, that you answer the

20 question before we take a break.

21 A. Okay.

22 Q. The other thing that might happen is

23 that, along the way, if you answer one of my

24 questions and then later remember something

25 else about the question -- please make sure to

Page 7

1 P. Singh

2 tell me and we can go back and supplement your

3 answer.

4 A. Okay.

5 Q. Finally, if you think that there are

6 some documents that might help you remember

7 something, let me know that a document exists,

8 I have some documents here and we can use

9 them, if it will help you remember.

10 A. Okay.

11 Q. I need to ask you a few questions

12 about your competency as a witness and that is

13 just to make sure that we are not wasting any

14 time in terms of accuracy and truthfulness of

15 your deposition today.

16 A. Okay.

17 Q. Did you have anything to drink in

18 the last eight hours? Alcohol.

19 A. The last eight hours? No.

20 Q. Are you sick at all today?

21 A. No.

22 Q. Are you under a doctor's care for

23 any illness?

24 A. No.

25 Q. Are you taking any medication?

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1 P. Singh

2 A. I am taking Lipitor for cholesterol.

3 Q. Does that affect your memory at all?

4 A. Not at all.

5 Q. Is there any reason that you know of

6 that would affect your ability today to

7 testify truthfully and accurately?

8 A. No.

9 MS. WHITING: Okay. I would like to

10 mark, as Exhibit 1, the notice of

11 deposition.

12 (Petitioner's Exhibit 1, Notice,

13 marked for identification as of this

14 date.)

15 A. Thank you.

16 Q. Please take a moment to look at

17 that.

18 A. Yes.

19 Q. Have you seen this document before?

20 A. This one? I don't think so.

21 Q. This is a notice of deposition for

22 this matter. It notices the most

23 knowledgeable person concerning certain issues

24 under the Federal Rules of Civil Procedure.

25 A. Yes.

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1 P. Singh

2 Q. I am going to ask you, just to make

3 sure that we have the most knowledgeable

4 person here, I am going to ask you if you are

5 the most knowledgeable person concerning

6 certain issues?

7 A. Sure.

8 Q. Are you the most knowledgeable

9 person concerning the general nature of the

10 business activities undertaken by Hachette,

11 with respect to Hachette's mark ELLE, from the

12 date of first use to the present?

13 A. Yes.

14 Q. Are you the most knowledgeable

15 concerning the creation, the adoption and the

16 first use of the mark?

17 A. Yes.

18 Q. Are you the most knowledgeable

19 person concerning the first use of the Elle

20 Belle mark?

21 A. Yes.

22 Q. Are you the most knowledgeable

23 person concerning the advertising and

24 promotional efforts undertaken in connection

25 with Elle Belle's trademark, Elle Belle?

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1 P. Singh

2 A. Yes.

3 Q. Including the identity of any

4 outside agencies used by Elle Belle to conduct

5 any advertising or promotional efforts?

6 A. Ask the question again?

7 Q. Sure. Are you the most

8 knowledgeable person concerning advertising

9 and promotional efforts concerning the Elle

10 Belle trademark?

11 A. Yes.

12 Q. Are you the most knowledgeable

13 person concerning any defenses in your

14 response to Hachette's petition to cancel the

15 Elle Belle mark?

16 A. Yes.

17 Q. Are you the most knowledgeable

18 person concerning any damages or harm that

19 Elle Belle alleges to have suffered as a

20 result of Hachette's failure to file a notice

21 of opposition in this matter?

22 A. Yes.

23 Q. Are you the most knowledgeable

24 person concerning any consumer understanding

25 concerning the Elle Belle mark or the ELLE

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1 P. Singh

2 mark?

3 A. Yes.

4 Q. Are you the most knowledgeable

5 person concerning any third-party use, that

6 means any use other than by Hachette or by

7 Elle Belle of a mark containing ELLE?

8 A. I don't know.

9 Q. Do you know of any use of the mark

10 ELLE by anyone other than Hachette?

11 A. I don't know.

12 Q. Is there anyone else that would

13 know?

14 MS. KIM: She is asking you if you

15 are aware of any companies using the mark

16 ELLE, other than her company and your

17 company?

18 THE WITNESS: There are so many

19 companies which has the Elle name, yes.

20 Q. Is there anyone else at Elle Belle

21 that would have any other knowledge about

22 these other companies other than you?

23 A. Maybe, yes.

24 Q. Who would that be?

25 A. In the business, business people,

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1 P. Singh

2 they should know there are some other

3 companies that are using Elle, this name.

4 Q. Other people that work for the

5 company, Elle Belle?

6 MS. KIM: Excuse me.

7 A. No.

8 MS. KIM: Can I clear it up? I

9 don't think anybody has any specific

10 information about any company, but they

11 have just seen the word Elle, like in

12 advertisements or in phone directories or

13 on the Internet, but I don't think

14 anybody has any specific information

15 about any one of those companies.

16 MS. WHITING: Okay.

17 MS. KIM: Is that correct?

18 THE WITNESS: Correct.

19 BY MS. WHITING:

20 Q. Did you prepare for your deposition

21 today?

22 A. Yes.

23 Q. How did you prepare?

24 A. I am ready, because whatever I will

25 tell you is true, it is true. Nothing is

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1 P. Singh

2 hidden. I am ready for everything. The last

3 ten years I have had this company. The

4 company was registered.

5 Q. Sir, I will ask another question to

6 clarify that question.

7 Did you speak to anyone before your

8 deposition today to help you prepare for

9 testifying today?

10 A. I sat with my attorney, two days

11 ago, who told me that we were going to have

12 the deposition, and I sat with her. That's

13 it.

14 Q. You did not speak with anyone else,

15 other than your attorney?

16 A. No.

17 Q. Did you look at any documents in

18 preparation for your testimony today?

19 A. My attorney gave me documents. She

20 obviously gave me whatever she was doing and I

21 looked at all of those documents and whatever

22 happened in the past.

23 Q. What documents did you look at?

24 A. The documents -- some

25 interrogatories. Some interrogatories, I saw

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1 P. Singh
2 those documents.
3 Q. You looked at interrogatories?
4 A. Yes.
5 Q. Did you look at any other documents,
6 other than interrogatories?
7 A. No.
8 Q. Okay.
9 MS. KIM: Actually, just to refresh
10 your memory, if you recall, we might have
11 looked at some invoices.
12 THE WITNESS: Excuse me?
13 MS. KIM: We had looked at some
14 invoices, as well.
15 A. Yes, we looked at invoices while I
16 was there.
17 Q. Which invoices did you look at?
18 MS. KIM: We looked at the invoices
19 that were produced to you.
20 MS. WHITING: All right.
21 MS. KIM: Actually, we looked at
22 most of the documents that were produced
23 to you, as well, most of the other
24 documents that were produced.
25 MS. WHITING: Okay.

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1 P. Singh
2 Q. Mr. Singh, where were you born?
3 A. Afghanistan.
4 Q. What is your citizenship?
5 A. U.S.
6 Q. When did you come to the U.S.?
7 A. 1984.
8 Q. And what prompted you to come to the
9 U.S.?
10 A. Excuse me?
11 Q. What prompted you to come to the
12 United States?
13 A. The purpose?
14 Q. Why did you come to the United
15 States?
16 A. We were refugees from Afghanistan.
17 We had big problems over there and we were not
18 able to live there anymore. So, that is the
19 reason I came with my family and friends to
20 the U.S.A., to take the refugee status.
21 Q. You came with your family?
22 A. Yes.
23 Q. Who in your family did you come
24 with?
25 A. My wife and four children.

Page 16

1 P. Singh
2 Q. Were you educated in Afghanistan?
3 A. Not really.
4 Q. Was there an informal education
5 there?
6 A. We have -- what did we have over
7 there? -- our own religion schools, our own
8 language. We studied there, but -- and that
9 is it. And we had some English classes.
10 That's it.
11 Q. Did you have any further education
12 when you came to the United States?
13 A. I took some English courses, some
14 classes, yes.
15 Q. Did you take any business classes
16 here?
17 A. No.
18 Q. Where did you take your English
19 classes?
20 A. In Queens. We were living in
21 Queens. There were some teachers and I just
22 wanted to learn English.
23 Q. Were you working in Afghanistan
24 before you left?
25 A. I was working in the market -- the

Page 17

1 P. Singh
2 business was currency exchange. This is a
3 free trade in Afghanistan. It used to be a
4 free trade, currency exchange, like a bank.
5 Q. All right. Did you continue with
6 that job when you came to the United States?
7 A. No. I started working with my
8 brother who was living here, a small business.
9 Q. Can you describe what that business
10 was?
11 A. He was selling costume jewelry made
12 of brass and bones, that sort of thing.
13 Q. What type of business was it? Was
14 it -- I will just clarify that question. Was
15 it a retail business?
16 A. A very small retail business.
17 Q. Was there a retail store?
18 A. It was on Broadway and 55th Street,
19 I believe.
20 Q. When did you start working with your
21 brother in this retail jewelry business?
22 A. The night I came in this country,
23 the next morning I started.
24 Q. In 1994?
25 A. 1994, yes.

Page 18

1 P. Singh

2 Q. Did that also have a wholesale part

3 of the business?

4 A. Not at all.

5 Q. And how long did you work for your

6 brother's company?

7 A. I worked for him five days. After

8 five days I told him I wanted to do my own

9 business, and I took over his business. And

10 they find another business, and that is what

11 they gave me their business, and I started

12 from there.

13 Q. You took over your brother's jewelry

14 business?

15 A. He gave me, I told him I wanted to

16 do a business. I told him, because actually

17 in Afghanistan we are business people,

18 everybody does business, and instead of

19 sending us to school, they want to send us to

20 the store, to the business.

21 When they came -- when I came in

22 after four days, I have a big family. He was

23 alone; so, let me work myself and find me a

24 place. He said, No, they will look and, they

25 looked and found a better place and he went

Page 19

1 P. Singh

2 there and he gave me that. It was at this

3 part, it was not a store, but a small part of

4 a store. So, he gave me that business.

5 Q. What was the name of that business?

6 A. No name. It was a personal name,

7 his name. They took the license by his own

8 personal name.

9 Q. Okay. What was his personal name?

10 What is his personal name?

11 A. Amarjit Singh.

12 Q. Singh. Your last name?

13 A. Yes.

14 Q. How long did you work for this

15 business, your brother's former business,

16 which was now your business?

17 A. That place, I believe I worked for

18 one year.

19 Q. Did you have any other jobs during

20 that time?

21 A. After, even after two months, when

22 they came, when I came in this country and did

23 business, I rented another store in the flea

24 market in Queens in Jamaica and my wife

25 started working there in that store in

Page 20

1 P. Singh

2 Jamaica, Queens. So, we took over in the flea

3 market.

4 Q. Was there a business name for that

5 part of the business?

6 A. Well --

7 Q. The flea market business.

8 A. Its name was Lady K Fashion.

9 Q. What is your wife's name?

10 A. Kuldip Singh. K is for Kuldip.

11 Q. How did she start that business?

12 A. For that part, I have to give her

13 100 dollar deposit, which I had, and after

14 three months we have to give them, like, \$400

15 per month.

16 And I was making that much money,

17 so, I took that spot. And in the three

18 months, a couple of wholesalers would sell

19 brass or jewelry, and they knew me very well.

20 I am a very good paymaster.

21 I mean, I pay that money right away;

22 so, they know me in three months. Those

23 people gave me everything on credit. I took a

24 lot of stuff from them, during the flea

25 market, and it kept going like that so many

Page 21

1 P. Singh

2 years.

3 Q. What type of products did the Lady K

4 Fashion business sell?

5 A. Over there we had jewelry and brass

6 items.

7 Q. Does your wife have a background in

8 the fashion industry?

9 A. Not really. No.

10 Q. Had she owned a store before?

11 A. Never in life.

12 Q. So, this was her first job?

13 A. Yes.

14 Q. How long did --

15 Is that company still in existence?

16 A. No.

17 Q. How long did your wife and you, I

18 guess, work for that company?

19 A. It was 14 years, as I remember. 14

20 years we worked with that company.

21 Q. 14 years. And just to make sure I

22 understand correctly, it started around 1994?

23 A. 1994.

24 Q. Okay.

25 A. And in this 14 years, the jewelry --

Page 22

1 P. Singh

2 in that flea market we took a bigger store and

3 we put ladies' dresses, evening dresses,

4 everything there.

5 Q. So, the business went from selling

6 jewelry and brass to evening wear?

7 A. And dresses. Fancy evening dresses.

8 Q. Anything other than jewelry, brass

9 and evening wear dresses that this company

10 sold, Lady K?

11 A. Jewelry brass and evening dresses.

12 That's it. Evening dresses, tops,

13 bottoms, not only dresses. But yes, we had

14 blouses, scarves, pants, separates, everything

15 was there. Everything we had there.

16 Q. Was this only for women?

17 A. Only for women, yes.

18 Q. And why did the company end after 14

19 years?

20 A. Elle Belle in 1995, we had the store

21 1020 Sixth Avenue in 1995.

22 In 1998, there was another store

23 behind my store in the same building; so, I

24 took over that store, also. I spoke to my --

25 my landlord that we wanted to expand the

Page 23

1 P. Singh

2 store, so --

3 Q. Sorry. I will stop you right there.

4 Did you say landlord or family, I

5 did not hear that?

6 A. No. I spoke to my wife that, I am

7 taking over this store, and business was slow

8 during the flea market. I said, you have to

9 close that store and we want to do business

10 together in this store. So, in 1988, ah, in

11 19', I think 1998, approximately, I am telling

12 you we closed that store and she came with me

13 in this store.

14 Q. Okay. So that I understand

15 correctly, the Lady K business ended in 1998?

16 A. Yes.

17 Q. Okay. So, it was in existence from

18 1994 to 1998, approximately?

19 A. 1984 to 1998, yes. 1984 to 1998.

20 Q. 1984?

21 A. Yes.

22 Q. You came to this country in --

23 A. 1984.

24 Q. I think I had gotten it wrong,

25 because I thought you came in 1994 and started

Page 24

1 P. Singh

2 working in 1994.

3 A. 1984.

4 Q. 1984.

5 A. Yes.

6 Q. How did you first become involved in

7 the Elle Belle business?

8 When I am talking about Elle Belle,

9 I am talking about the Elle Belle LLC

10 business.

11 A. In 1995 I enrolled in this business,

12 but before that I had another company, and I

13 was doing only wholesale all over the United

14 States, besides my wife's business, Lady K

15 Fashion, I had another company called Fashion

16 Forever.

17 Q. When did that company start?

18 A. That company started in 1991.

19 Q. And how did that company start?

20 A. Let me go back again.

21 Q. Sure.

22 A. In 1989, I was -- I don't want to do

23 only the small business, I wanted to do big

24 business. So, in 1989 I became partners with

25 a person, his company name was Guru Fashion.

Page 25

1 P. Singh

2 In 1989 I became his partner. After

3 he came to me, he told me -- Singh, let's do

4 this business together. He was in this

5 business for a long time. And I became his

6 partner in 1989.

7 In 1991, our partnership broke. I

8 got separate, friendly -- and he was

9 supplying, we were supplying evening ware

10 dresses all over the United States. Party

11 dresses.

12 In 1991, when we got separate, that

13 company, Fashion Forever -- I started that

14 company, and I did business until 1995.

15 And I had some big losses in that

16 business, and I wanted to go in the retail and

17 wholesale, and then I took this place in 1995,

18 and we started the business under Elle Belle

19 in 1995, the current shop.

20 Q. Okay. I will go back, to make sure

21 that I have not missed anything in the

22 sequence of your employment history.

23 After you took over your brother's

24 jewelry business, what was the next thing that

25 you did, in terms of employment?

<p style="text-align: right;">Page 26</p> <p>1 P. Singh</p> <p>2 A. The next thing I did, as I explained</p> <p>3 before, I opened that store for my wife in</p> <p>4 Jamaica, Queens.</p> <p>5 And meanwhile, I lost this part.</p> <p>6 The landlord did not want to give me that spot</p> <p>7 anymore in Broadway; so, I opened another</p> <p>8 store in Long Island flea market. I finished</p> <p>9 this store and opened another store.</p> <p>10 It was for the ladies evening wear</p> <p>11 and regular ladies' clothes. Besides my</p> <p>12 wife's store Lady K Fashion, I opened another</p> <p>13 store, under the same name.</p> <p>14 Q. Under the name of Lady K Fashion?</p> <p>15 A. Yes.</p> <p>16 Q. After -- well, then -- then Lady K</p> <p>17 Fashion, to make sure I understand this</p> <p>18 correctly -- that lasted until, I guess --</p> <p>19 (Phone ringing).</p> <p>20 MS. WHITING: Off the record.</p> <p>21 (Discussion off the record.)</p> <p>22 MS. WHITING: Back on the record.</p> <p>23 The phone just rang and we wanted to</p> <p>24 make sure that Mr. Singh did not need to</p> <p>25 take a break.</p>	<p style="text-align: right;">Page 28</p> <p>1 P. Singh</p> <p>2 yourself?</p> <p>3 A. Yes.</p> <p>4 Q. Was anyone else involved in the</p> <p>5 foundation of that company?</p> <p>6 A. Before the name there was a</p> <p>7 designer -- because in Fashion Forever I was</p> <p>8 dealing with salespeople and designers.</p> <p>9 So, I believe in, in -- I met the</p> <p>10 designer in 1995, and I knew him, and I told</p> <p>11 him listen, I want to open a retail business</p> <p>12 on the street, I formed this place, and can</p> <p>13 you suggest me a name. He is the person who</p> <p>14 suggested me the name Elle Belle, and I asked</p> <p>15 him what it means. He said it means she is</p> <p>16 beautiful.</p> <p>17 "Elle" means she and "belle" means</p> <p>18 beautiful, and he told me it is good for the</p> <p>19 dresses, for my dresses.</p> <p>20 Q. And this designer worked for Fashion</p> <p>21 Forever?</p> <p>22 A. No. No. No. I just knew him. He</p> <p>23 was working for another company.</p> <p>24 Q. What was the name of the other</p> <p>25 company?</p>
<p style="text-align: right;">Page 27</p> <p>1 P. Singh</p> <p>2 Q. After Lady K Fashion was your next</p> <p>3 venture, Fashion Forever?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And how did you get to know</p> <p>6 the partner of Guru Fashion?</p> <p>7 A. We knew each other from Afghanistan.</p> <p>8 He is also from Afghanistan.</p> <p>9 Q. Was that business a retail business?</p> <p>10 A. Only wholesale.</p> <p>11 Q. Is that business still in existence?</p> <p>12 A. He is still in business. I think he</p> <p>13 has a new name now.</p> <p>14 Q. What is that?</p> <p>15 A. Ah, Lara Design.</p> <p>16 Q. Is that company based in New York?</p> <p>17 A. Yes.</p> <p>18 Q. What is that person's name, the</p> <p>19 partner that you went into business with?</p> <p>20 A. Manmohan. The last name is Singh.</p> <p>21 Q. Let's talk about the beginning of</p> <p>22 Elle Belle. Who started that company; who</p> <p>23 founded that company?</p> <p>24 A. Myself.</p> <p>25 Q. You started that company only by</p>	<p style="text-align: right;">Page 29</p> <p>1 P. Singh</p> <p>2 A. I don't know. I don't remember.</p> <p>3 Q. When did --</p> <p>4 Does Elle Belle have a retail store?</p> <p>5 A. October of 1995.</p> <p>6 Q. You are telling me when the Elle</p> <p>7 Belle store was opened?</p> <p>8 A. Yes. It was, it was registered and</p> <p>9 opened in 1995, October of 1995.</p> <p>10 Q. Can you tell me the location of that</p> <p>11 store?</p> <p>12 A. 1020 Sixth Avenue, New York, 10018.</p> <p>13 Q. Do you own that, the real estate of</p> <p>14 that location?</p> <p>15 A. Excuse me?</p> <p>16 Q. Do you own that store, the real</p> <p>17 estate for that store?</p> <p>18 MS. KIM: Are you leasing the store?</p> <p>19 THE WITNESS: I am leasing the</p> <p>20 store.</p> <p>21 Q. Who are you leasing it from?</p> <p>22 A. It is a corporation which is called</p> <p>23 1020 Hotel Corporation.</p> <p>24 Q. All right. Is the lease in the name</p> <p>25 of Elle Belle?</p>

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1 P. Singh

2 A. Yes.

3 Q. And Elle Belle has been leasing it

4 continuously since 1995?

5 A. Yes.

6 Q. What is your title at Elle Belle?

7 A. I'm a partner.

8 Q. Who are you partners with?

9 A. My wife and my son.

10 Q. Do you have a title other than

11 partner?

12 A. No.

13 Q. Can you tell me what the partnership

14 interest is between you, your wife? First,

15 tell me your partnership interest.

16 A. Um, I have 40 percent, my wife has

17 30 percent, my son has 30 percent.

18 Q. Did you have that interest when Elle

19 Belle was first started in 1995?

20 A. Yes.

21 Q. What were your initial

22 responsibilities when Elle Belle started in

23 1995?

24 A. Everything. I mean, I am like a --

25 I take over everything. Let's say I am the

Page 31

1 P. Singh

2 boss there. How can I explain?

3 Q. And what are your wife's

4 responsibilities?

5 A. Sales.

6 Q. Your son's?

7 A. Sales.

8 Q. When you say "sales," is there a

9 particular area of sales that your wife is

10 responsible for?

11 A. My wife is taking care of the store,

12 which is on Sixth Avenue, 1020 Sixth Avenue,

13 and the other location is 39 West 38th Street,

14 and my son takes care of that.

15 Q. What is the difference between those

16 two stores?

17 A. On 38th Street, that is only

18 wholesale, but on Sixth Avenue, we do retail

19 and wholesale.

20 Q. Are there any other Elle Belle

21 stores?

22 A. No.

23 Q. I mean, Elle Belle, LLC stores.

24 A. No.

25 Q. Can you just describe, just

Page 32

1 P. Singh

2 generally at first, the nature of the Elle

3 Belle business, what kind of business it is?

4 A. It is a wholesale and retail.

5 Q. And, just generally, what types of

6 products does it sell?

7 A. We sell there, gowns, dresses, tops,

8 bottoms, um, purses, evening bags, shawls,

9 scarves, everything.

10 Q. Anything else other than gowns,

11 dresses, tops, bottoms, purses, evening bags,

12 shawls?

13 A. Ladies' shawls, scarves. I think

14 that's all.

15 Q. Is it fair to say that this is all

16 women's clothing?

17 A. Yes.

18 Q. Has the types of clothing that Elle

19 Belle has sold since it first started in 1995

20 and today, have the types of clothing changed

21 at all?

22 A. The fashion changes, the design

23 changes, but from the start we are selling the

24 same kind of -- every year the fashion

25 changes, we keep adding, but that is what we

Page 33

1 P. Singh

2 were selling from the start.

3 Q. So that I understand correctly, you

4 are saying that the design of these particular

5 types of clothing changes, but the types of

6 clothing, such as gowns, dresses, tops,

7 bottoms, purses, those have not changed, those

8 are still the same category of clothing that

9 you have sold since 1995?

10 A. Yes.

11 Q. Okay. What is your son's experience

12 in -- what is his work experience?

13 A. He is working with me.

14 He is my elder son, and when we

15 started the business, he kept helping me, and

16 he was studying in the college, and he did not

17 finish his college. I think, from the first

18 year, he said, dad, I want to work with you.

19 That was a big mistake in life, but

20 he came with me in the business and he started

21 helping me. From 1991 when I opened that

22 Fashion Forever, he started working with me in

23 that business.

24 And then when the business, after

25 two years, I told him, listen, I want you to

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1 P. Singh
2 actually, I am so busy I don't have time to
3 look in the magazine, but when I look at it, I
4 look at every magazine, I open -- I just look
5 at the colors in fashion, and the fashions,
6 and that's it. That's all I see there.
7 Q. If you had to describe to someone
8 the ELLE magazine, how would you describe it;
9 what kind of magazine is it?
10 A. I believe it is a fashion magazine.
11 Yes.
12 Q. Do you know, like, who would read
13 the ELLE fashion magazine?
14 A. I have no idea.
15 Q. Fine.
16 Do you remember seeing the ELLE
17 magazine in the United States?
18 A. Excuse me?
19 Q. Do you remember seeing the ELLE
20 magazine in the United States?
21 A. Yes. On the bookstores.
22 Q. Do you know when you first saw the
23 ELLE magazine?
24 A. A long time ago, I believe.
25 Q. Before you came to this country?

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1 P. Singh
2 A. No. No. No. We never saw that
3 kind of magazine, when they -- when I went in
4 this business -- in this business, and a
5 couple years back I saw the magazine the first
6 time, maybe four or five years ago.
7 Q. Okay. Does your wife read ELLE
8 magazine?
9 A. She reads only Indian newspaper and
10 The New York Times. Life is so busy, we don't
11 have time.
12 MS. WHITING: Off the record.
13 (Discussion off the record.)
14 MS. WHITING: We will take a
15 luncheon recess at this time.
16 (Time noted: 11:50 a.m.)
17
18
19
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21
22
23
24
25

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1 P. Singh
2 AFTERNOON SESSION
3 12:33 p.m.
4 P A R A M J I T S I N G H, having been
5 previously sworn, resumed the stand and
6 testified further as follows:
7 CONTINUED EXAMINATION
8 BY MS. WHITING:
9 Q. Mr. Singh, your counsel mentioned to
10 me that there was a question that you
11 misunderstood in our first session this
12 morning; so, I will reask you a question, and
13 please supplement your answer and let me
14 know --
15 A. Okay.
16 Q. -- what you believe to be true now.
17 The question is: In what other
18 stores or places, other than the Elle Belle
19 retail wholesale store on Sixth Avenue and the
20 Elle Belle wholesale store on 38th Street, are
21 the Elle Belle goods sold?
22 A. All my, most of my wholesale
23 customers who buy from me, overseas or in the
24 United States, some of them definitely have my
25 labels.

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1 P. Singh
2 Q. Okay. So, when you sell your goods,
3 are these goods that you sell at wholesale to
4 these customers?
5 A. Yes.
6 Q. And they, are they retail stores?
7 A. They are retail stores, yes.
8 Q. Do they resell the goods, the Elle
9 Belle labeled goods, in the United States?
10 A. To the public, yes.
11 Q. And what are some of the retail
12 stores that resell the goods in the United
13 States?
14 A. Some of them Michigan, in New
15 Jersey, and New York, Long Island.
16 Q. What are some of the stores' names?
17 A. Michigan, I remember, Star Fashion.
18 Abeer Fashions.
19 Q. Let me interrupt you for a second,
20 sorry, just relating to the answer that you
21 just gave me. These two places you mentioned
22 are in Michigan?
23 A. Yes.
24 Q. Is that correct?
25 A. Yes.

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1 P. Singh
 2 MS. KIM: Again, she is asking you
 3 for the retail stores that you know sell
 4 your clothes under the Elle Belle mark.
 5 A. Okay. Those two stores, definitely
 6 they sell my mark, yes.
 7 Q. Are there any other stores in the
 8 United States that sell the Elle Belle labeled
 9 goods?
 10 A. Most of the retail in the United
 11 States, they don't change label. All of the
 12 manufacturers, they leave their label.
 13 Q. Do you know of any other stores than
 14 the two you listed in Michigan that resell the
 15 Elle Belle goods at retail in the United
 16 States?
 17 A. I did not go to any other stores;
 18 so, I am not sure.
 19 Q. You have been to the two stores in
 20 Michigan?
 21 A. No. But they told me they are
 22 selling my labels.
 23 Q. Have you been to any stores that
 24 sell the Elle Belle goods, other than the
 25 stores Elle Belle, that Elle Belle LLC owns?

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1 P. Singh
 2 MS. KIM: Sorry. Can we clarify
 3 that, because you are saying other stores
 4 that sell the Elle Belle goods? But we
 5 are, right now, I think we are trying to
 6 clarify whether they sell Elle Belle
 7 goods under their own label or whether
 8 they sell the Elle Belle goods under the
 9 Elle Belle label.
 10 MS. WHITING: I guess when I say
 11 Elle Belle goods, and let me clarify that
 12 for record, I am talking about goods,
 13 clothing, that is sold under the Elle
 14 Belle label.
 15 MS. KIM: Okay.
 16 MS. WHITING: That's what I am
 17 talking about.
 18 A. I did not go to any stores, so -- I
 19 cannot say anything.
 20 But most of my experience, the
 21 retail stores, they don't change the label.
 22 Elle Belle labels, they keep Elle Belle, or
 23 Cassandra Stone, they keep the Cassandra Stone
 24 label; so, they don't change it, in my
 25 experience.

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1 P. Singh
 2 Q. Do you have any list of your
 3 customers?
 4 A. I don't have, but the invoices show
 5 the names of my customers.
 6 Q. You are talking about the invoices
 7 that you produced to us, which include
 8 wholesale invoices only?
 9 A. Only, yes.
 10 Q. Is there anything else that you need
 11 to tell us to clarify your answer?
 12 A. That's it.
 13 Q. I wanted to go back and touch on a
 14 couple topics that we discussed this morning,
 15 quickly. We spoke about the awning on the
 16 Sixth Avenue store.
 17 A. Yes.
 18 Q. When was that awning put on the
 19 store?
 20 A. 1995.
 21 Q. As soon as it opened?
 22 A. Yes. The day it opens, yes.
 23 Q. Do you know when the store opened in
 24 1995?
 25 A. It was, I believe, up to October

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1 P. Singh
 2 15th, approximately.
 3 Q. About the same time that the company
 4 was registered, or that it was --
 5 A. Yes.
 6 Q. Let me ask the question again.
 7 About the same time that the company applied
 8 to register with the New York State
 9 corporation --
 10 A. Yes.
 11 Q. And how is the wholesale store on
 12 38th Street labeled? Is there an awning on
 13 that store, as well?
 14 A. There is no awning, but I have my
 15 name on it. It has a big glass window. The
 16 name is there.
 17 Q. And tell me, again, when that store
 18 opened.
 19 A. Um, 38th Street?
 20 Q. Yes.
 21 A. It is more than two years.
 22 Q. A little bit more than two years
 23 ago?
 24 A. Yes. It is approximately two years.
 25 Q. I want to just go back over the

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1 P. Singh

2 Q. With respect to Petitioner's Exhibit

3 11, which appears to be a printout of marks

4 applied for, and they look to include the word

5 ELLE, do you know whether any of these marks

6 are actually in use?

7 A. I don't know, but I can see here,

8 "live" means they are in business. They are

9 using it.

10 Q. It is your understanding that "live"

11 means that they are in business?

12 A. Yes.

13 Q. Do you have any understanding of

14 what "dead" means?

15 A. "Dead" means closed.

16 Q. Do you know whether, in fact, any of

17 these marks have been registered with the

18 United States Patent and Trademark Office?

19 A. I don't know.

20 Q. With respect to Petitioner's Exhibit

21 12, I am assuming the same is true with this

22 document -- that you don't have any knowledge

23 about whether or not these companies are using

24 ELLE as a trademark or a service mark?

25 A. I have no knowledge.

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1 P. Singh

2 Q. With respect to the last exhibit,

3 Petitioner's Exhibit 13, please correct me if

4 I am wrong, but I am assuming, with respect to

5 this exhibit, that you also don't have any

6 knowledge whether these companies are using

7 ELLE as a trademark or a service mark?

8 A. No.

9 Q. Okay.

10 Is it your position that any of

11 these business names that we just went over in

12 Petitioner's Exhibit 10 through 13 are

13 relevant at all to this proceeding?

14 A. Excuse me?

15 Q. Do you think that these are

16 relevant, these business names that are listed

17 in Petitioner's Exhibits 10 through 13, do you

18 think that they are relevant at all to this

19 proceeding?

20 MS. KIM: Objection to that. You

21 are asking for a legal conclusion. You

22 can go ahead and answer, if you can, if

23 you can answer that.

24 THE WITNESS: I don't understand

25 that.

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1 P. Singh

2 Q. What do you think the significance

3 is of any of these exhibits, Petitioner's

4 Exhibits 10, 11, 12 or 13?

5 A. I don't understand the question; so,

6 I don't know what to say.

7 Q. I will ask one more time. If you

8 don't know, say you don't know.

9 A. No problem.

10 Q. Petitioner's 10 through 13, the

11 exhibits that we just looked at, do you think

12 that these matter at all in this proceeding?

13 MS. KIM: Objection to that again.

14 Answer, if you understand what she

15 is asking.

16 A. These are -- I mean, there are so

17 many companies are ELLE, doing business here,

18 and I am doing it under Elle Belle; why am I

19 facing this problem? And just -- the mark is

20 registered. I am not harming anyone. I am

21 not harming anybody.

22 I don't know why I have to face this

23 problem. I am using this business name for

24 five years.

25 I got the first letter from this

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1 P. Singh

2 ELLE company from France. They asked me stop

3 using this name. Five years is gone and I

4 always tried not to spend any extra money on

5 advertisement for the business. I don't know

6 what is going to happen.

7 Q. Okay.

8 A. It means that I am losing business.

9 Q. Let's address your answer, and I

10 have a couple questions about that.

11 I think with respect to the

12 Petitioner's Exhibits 10 through 13, and

13 correct me if I am wrong, it sounds like you

14 are saying that these are examples of use of

15 the Elle Belle, of the ELLE mark?

16 A. Of the ELLE mark.

17 Q. And I will ask you that follow-up

18 question, which is: Do you actually know

19 whether any of these companies are using an

20 ELLE mark now?

21 A. I don't know.

22 Q. Or have ever used an ELLE mark.

23 A. I am not familiar with that.

24 Q. Okay. And with respect to the cease

25 and desist letters that you just mentioned,

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1 P. Singh

2 A. Excuse me.

3 Q. Did you incur money between 2000 and

4 2005 in training your employees to sell Elle

5 Belle goods and to run the store?

6 A. Yes, I have to hire extra employees

7 for that store.

8 Q. Did you incur any expenses in

9 getting a listing in the Yellow Pages?

10 A. No.

11 Q. What about directory assistance?

12 A. No. I think I never paid for that.

13 Q. Did you incur any other expenses in

14 expanding your business between 2000 and 2005

15 that you can think of, other than what we have

16 already talked about?

17 A. No. Whatever I explained, I think

18 that is all. I paid rent for both stores. I

19 pay rent for the 1020 Sixth Avenue, for the

20 electricity, for the water, for the heating

21 and I pay that.

22 Q. Would you have spent all this money

23 that we have just talked about if in 2000, you

24 had discovered that you had no rights to the

25 mark Elle Belle?

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1 P. Singh

2 A. I could have spent for my business,

3 yes, I was going to spend that money for the

4 expansion of my business.

5 Q. If in 2000 you had learned that you

6 could not use the mark Elle Belle, would you

7 have spent all this money in promoting your

8 Elle Belle store, under the mark Elle Belle?

9 A. You mean -- what's the question

10 again? Sometimes I don't understand.

11 Q. All right. If you had learned in

12 2000 that you had no rights to the mark Elle

13 Belle, and you could not use the mark Elle

14 Belle, would you have invested all this extra

15 money?

16 A. Not at all, no.

17 Q. Your store, and your label Elle

18 Belle, do you think that it has a reputation

19 that is recognized --

20 A. Yes.

21 Q. -- in the industry?

22 A. Yes.

23 Q. What is that reputation?

24 A. The reputation of the dresses, they

25 are so famous, good quality, the overseas

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1 P. Singh

2 customers come looking for the Elle Belle

3 name, looking for us to buy dresses from us.

4 Q. You had said earlier that customers

5 from outside of the U.S. know your store

6 because they come to the fashion district and

7 they see your store.

8 A. Yes. They see my store and, plus,

9 overseas they are looking at my tags and they

10 come to tell us and they are looking for us

11 and they become very happy we found you, we

12 found Elle Belle.

13 Q. They also are aware of your store

14 because they see your products overseas?

15 A. Yes.

16 Q. Do your products also get advertised

17 through word of mouth; do you know?

18 A. What?

19 Q. Word of mouth.

20 A. Yes. Definitely. Yes.

21 Q. Do you know what is said about your

22 products?

23 A. Especially in the dance school, we

24 are providing them custom made dresses, and

25 they have every dance school looking for Elle

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1 P. Singh

2 Belle, where is Elle Belle.

3 As I explained, our business

4 increased this year, because of the dance

5 school business that we are getting. They are

6 talking that they are looking for us,

7 following us.

8 Q. Do you have a lot of repeat

9 customers?

10 A. Um, some, yes.

11 Q. Do you know what repeat customers

12 are?

13 A. Well --

14 Q. Repeat customers are customers that

15 come back, customers that have done business

16 with you?

17 A. A lot of them, yes.

18 Q. Why do you think that customers come

19 back to do business with you?

20 A. They like our product, and my name

21 is Elle Belle -- the label is famous overseas,

22 mostly, in South America.

23 Q. And you are saying that you have

24 lots of clients from South America.

25 A. Yes.